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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY J. LAUCKHART, CRAIG B. HORMAN, CHRISTA
KOROL, and JAMES T. BARTOT

Appeal 2009-006627
Application 09/695,216¹
Technology Center 2400

Before JEAN R. HOMERE, JOHN A. JEFFERY, and JAMES R. HUGHES,
Administrative Patent Judges.

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL²

¹ Application filed October 25, 2000, claiming benefit of 60/175,665 filed January 12, 2000 and 60/231,195 filed September 7, 2000. The real party in interest is NetRatings, Inc. (App. Br. 2.)

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal from the Examiner's rejection of claims 1-69 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

The invention at issue on appeal relates to a system and method for estimating the prevalence of digital content on a network utilizing traffic data collected from the network, masking user identification data in the traffic data, and summarizing the occurrences of the particular digital content. (Spec. 1:7-11; 3:6-15.)³

Representative Claim

Independent claim 1 further illustrates the invention, and is reproduced below:

1. A system for estimating the prevalence of digital content on a network, comprising:

an estimating device that receives traffic data collected from the network;

an anonymizing device that locates user identification data in the traffic data, masks the user identification data to produce clean traffic data, and stores the clean traffic data;

a sampling device that stores summarization data that describes each occurrence of the digital content in the clean traffic data and scales the data by a weighting factor to extrapolate global traffic data; and

³ We refer to Appellants' Specification ("Spec."), and Appeal Brief ("Br.") filed July 14, 2008. We also refer to the Examiner's Answer ("Ans.") mailed September 2, 2008.

an accessing device that presents the clean traffic data
and the summarization data to a user.

References

The Examiner relies on the following references as evidence in
support of the rejections:

McCallum	US 5,784,635	Jul. 21, 1998
Bittinger	US 5,878,213	Mar. 2, 1999
Plasek	US 5,878,426	Mar. 2, 1999
Bull	US 5,995,943	Nov. 30, 1999
Pallmann	US 6,094,684	Jul. 25, 2000 (filed Apr. 2, 1997)
Blumenau	US 6,108,637	Aug. 22, 2000 (filed Sept. 3, 1996)
Yeager	US 6,167,402	Dec. 26, 2000 (filed Apr. 27, 1998)
Lee	US 6,601,100 B2 (continuation of 09/238,861 filed Jan 27, 1999)	Jul. 29, 2003

Eran Gabber, et al., *Consistent, Yet Anonymous, Web Access with LPWA*, 42 Comm. of the ACM 47 (Feb. 1999) (hereinafter “Gabber”).

Rejections on Appeal

1. The Examiner rejects claims 1, 2, 4-10, 14, 15, 18-21, 23, 25, 32, 35, 55, 56, 58-61, 63-66, 68, and 69 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, and Plasek.⁴

2. The Examiner rejects claims 3, 22, 24, 26, 29 and 33 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, and Lee.

3. The Examiner rejects claims 11 and 27 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, and Gabber.

4. The Examiner rejects claims 12, 13 and 28 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, Gabber, and Lee.

5. The Examiner rejects claims 30 and 31 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, Lee, and Bittinger.

6. The Examiner rejects claim 34 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, and Yeager.

⁴ The Examiner inadvertently omitted claims 57, 62, and 67 from this rejection – claims 57, 62, and 67 each recite “computing a number of impressions,” which the Examiner believes to be taught by Bull and Plasek. (Ans. 16.) Appellants do not object to the omission, nor do they separately address these claims. Thus, we find the omission to be harmless and revise the statement of rejection to include these claims.

7. The Examiner rejects claim 36 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, and Pallmann.

8. The Examiner rejects claims 16, 17, 37, 44, 48, 50, 53, 54, 57, 62, and 67 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, and Blumenau.

9. The Examiner rejects claims 38, 41, 45, 49 and 51 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, Blumenau, and Lee.

10. The Examiner rejects claims 39, 40 and 52 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, Blumenau, Lee, and Gabber.

11. The Examiner rejects claims 42 and 43 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, Blumenau, Lee, and Bittinger.

12. The Examiner rejects claim 46 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, Blumenau, and Yeager.

13. The Examiner rejects claim 47 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bull, McCallum, Plasek, Blumenau, and Pallmann.⁵

⁵ The Examiner mistakenly rejected claim 46 instead of claim 47 in this rejection – claims 47 recites “normalizing the detected advertising within an HTML or an XML document,” which the Examiner believes to be taught by Pallmann. (Ans. 14.) Appellants do not object to this typographical error, nor do they separately address this claim. Thus, we find the typographical

ISSUE

Based on our review of the administrative record, Appellants' contentions, and the Examiner's findings and conclusions, the pivotal issue before us is as follows:

Does the Examiner err in finding Bull would have taught or suggested receiving "traffic data collected from the network" as recited in Appellants' claim 1?

FINDINGS OF FACT (FF)

We adopt the Examiner's findings in the Answer and Final Office Action as our own, except as to those findings that we expressly overturn or set aside in the Analysis that follows. We also add the following factual findings:

Appellants' Specification – "Traffic Data"

1. Appellants do not explicitly define "traffic data," but admit that traffic data is well known and describe examples of systems for acquiring traffic data, as well as traffic data itself. (Spec. 8:1-22; 9:9-18.) Appellants explain that:

The present invention can use any commercially available traffic sampling system that provides functionality similar to the Media Metrix audience measurement product. Other possible mechanisms to obtain a traffic data sample include: "Proxy Cache Sampling" [which] gathers data such as user clickstream data, and Web page requests[;] "Client-Side Panel Collection" [which] retrieves sample data from each

error to be harmless and revise the statement of rejection to substitute claim 47.

panelist via a client-side mechanism [that] may monitor the browser location bar, use browser, a client-side proxy, or TCP/IP stack hooks[;] Any content distribution mechanism that replicates Web page or site content in a manner meant to ease network congestion or improve user experience[;]
. . . . Any content filtering mechanism that evaluates requests for URLs and takes actions to allow or disallow such requests[;]
. . . . [and] server logs maintained by Internet service providers (“ISPs”) or individual Web sites.

(Spec. 8:1-5, 10-13, 21-22 (emphasis added).)

The traffic analysis system 210 receives raw traffic data from the traffic sampling system 120 In one embodiment, the traffic analysis system 210 receives traffic data from a cache site on the Internet 100. The goal is to accurately measure the number of page views by individual users, and therefore the number of advertising impressions.

(Spec. 9:9-10, 15-18 (emphasis added).)

Bull Reference

2. Bull, in relevant part, describes collecting user Internet usage data, or “traffic data.” For example, Bull describes an “aggregation and synthesization system” (col. 3, ll. 31-32) that “allows the user’s activity to be tracked and establishes a log of the user’s activity” (col. 3, ll. 35-36). Bull also describes a “gateway . . . to poll, access and retrieve information from various locations [and] [a] filtering process [that returns] the resulting information . . . to the requesting party. (Col. 3, ll. 62-65.) Bull also monitors and records a user’s Internet (World Wide Web (WWW)) activity and viewing patterns. (Col. 5, ll. 14-17, 52-53, 61-62.)

ANALYSIS

Appellants argue independent claims 1, 7, 25, 37, 48, 50, 53, 55, 60, and 65 as a group with respect to the Examiner's § 103 rejection of claims 1, 2, 4-10, 14, 15, 18-21, 23, 25, 32, 35, 55, 56, 58-61, 63-66, 68, and 69 (Rejection 1). (Br. 9.) Appellants do not address independent claim 6. (Br. 9-12.) Therefore, we select independent claim 1 as representative of Appellants' arguments and groupings with respect to the Examiner's obviousness rejections. 37 C.F.R. § 41.37(c)(1)(vii). *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987). We have considered only those arguments that Appellants have actually raised in their Brief. Arguments that Appellants could have made but chose not to make in their Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants have the opportunity on appeal to the Board of Patent Appeals and Interferences (BPAI) to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). The Examiner sets forth a detailed explanation of a reasoned conclusion of obviousness in the Examiner's Answer with respect to each of Appellants' claims (Ans. 3-21), and in particular independent claim 1 (Ans. 3-5, 20-21). Therefore, we look to the Appellants' Brief to show error in the proffered reasoned conclusions. *See Kahn*, 441 F.3d at 985-86.

Arguments Concerning the Examiner's Rejection of Representative Claim 1

The Examiner rejects Appellants' independent claim 1 as being obvious over Bull, McCallum, and Plasek. (Ans. 3-5.) Specifically, the

Examiner finds that the cited references teach each recited limitation of Appellants' claim, and the Examiner also provides a rationale for combining each of the references. (*Id.*) The Examiner further finds that Bull describes "an estimating device that receives traffic data collected from the network" (Ans. 4 (citing Bull – col. 3, ll. 27-65); that Bull describes "World Wide Web (WWW) viewing patterns [that] are traffic data" (Ans. 20 (citing Bull – col. 5, ll. 51-54); and Bull describes that "records will be maintained from the user usage of the internet" where in this citation, the 'traffic data' is the record of the user usage of the internet." (Ans. 21 (quoting Bull – col. 5, ll. 61-62).)

Appellants, on the other hand, contend that "Bull fails to teach or suggest the claimed "traffic data."" (Br. 9.) This is the only issue raised by Appellants on appeal, they do not otherwise dispute the Examiner's findings with respect to the teachings of the cited prior art references. (*See* Br. 9-12.)

Based on the record before us, we do not find error in the Examiner's obviousness rejection of Appellants' claim 1. We agree with the Examiner that Bull, McCallum, and Plasek would have taught or suggested the recited claim limitations, and in particular receiving traffic data (FF 2).

We begin our review by construing the disputed claim terminology. We give claim terminology the "broadest reasonable interpretation consistent with the [S]pecification" in accordance with our mandate that "claim language should be read in light of the [S]pecification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). The disputed limitation recites "an estimating device that receives traffic data collected from the network." (Br. 14; Claim App'x., Claim 1.)

As detailed in the Findings of Fact section *supra*, Appellants do not explicitly define “traffic data” and provide a number of examples describing traffic data and methods of acquitting traffic data. (FF 1.) Based on Appellants’ disclosures, we construe “traffic data” to simply mean data related to data transmissions (traffic) in a network, without limitation as to the amount or type of data transmitted. “It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). Appellants’ Specification, which acts as “the primary basis for construing the claims,” *id.* at 1315, supports this construction.

Bull teaches an aggregation and synthesization system that tracks and logs a user’s Internet activity and viewing patterns. (FF2.) We find that one of skill in the art would have understood “traffic data” to be equivalent to a user’s Internet activity that is monitored, tracked, and recorded (logged), in that the user’s activity data constitutes data related to data transmissions (traffic) in a network.

We find Appellants’ contrary arguments unavailing. Specifically, Appellants argue that Bull performs data collection and tracking based on data content (Br. 9-12) – “Bull looks at the content of the user’s activities, not the traffic” (Br. 10). These arguments are inaccurate – Bull expressly describes monitoring, polling, tracking and recording Internet activity of a user. (FF 2.) As explained by the Examiner, “data about the content of traffic is still traffic data.” (Ans. 20.) Further, these arguments are not commensurate with the scope of Appellants’ claim limitation, which does

not preclude receiving traffic data including content of a user's Internet activity. There is a fine line between reading a claim in light of Appellants' Specification and importing a limitation from the Specification into the claim. *See, e.g., Decisioning.com, Inc. v. Federated Dep't Stores, Inc.*, 527 F.3d 1300, 1307-08 (Fed. Cir. 2008); *Phillips*, 415 F.3d at 1323-24. We must avoid importing limitations from Appellants' Specification. *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim."). Review of Appellants' Specification reveals no intent to limit the term "traffic data" by using it in a manner that excludes content data. Further, Appellants failed to file a Reply Brief to rebut the findings and responsive arguments made by the Examiner in the Answer. Therefore, we find that Appellants do not provide any persuasive evidence or argument that Bull would have taught or at least suggested the disputed features to one of skill in the art at the time of Appellants' invention.

Appellants do not separately argue independent claims 6, 7, 25, 37, 48, 50, 53, 55, 60, and 65, nor dependent claims 2-5 (dependent on claim 1), 8-24 (dependent on claim 7), 26-36 (dependent on claim 25), 38-47 (dependent on claim 37), 49 (dependent on claim 48), 51 and 52 (dependent on claim 50), 54 (dependent on claim 53), 56-59 (dependent on claim 55), 61-64 (dependent on claim 60), and 66-69 (dependent on claim 65) (*supra*). It follows that Appellants do not persuade us of error in the Examiner's obviousness rejections of claims 1-69, and we affirm the Examiner's rejection of these claims.

CONCLUSION OF LAW

Appellants have not shown that the Examiner erred in rejecting claims 1-69 under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's rejection of claims 1-69 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

erc

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